

(2000) 08 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 10622 of 2000

Haryana State

APPELLANT

Vs

Dharam Pal

RESPONDENT

Date of Decision : 14-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11

Citation : (2000) 08 P&H CK 0020

Hon'ble Judges : S.S. Sudhalkar, J; Mehtab S. Gill, J

Bench : Division Bench

Advocate : Mr. Amol Rattan Singh, AAG, for the Appellant;

Judgement

S.S. Sudhalkar, J.—By this writ petition, the petitioner is challenging the award of the Labour Court dated 10.4.2000 Annexure P-11 by which punishment of termination of his service was substituted by that of stoppage of four annual increments with cumulative effect.

2. Counsel for the petitioner argued that the Labour Court, Hisar, had no authority to substitute the punishment awarded by the department. He has cited the case of U.P. State Road Transport Corporation v. A.K. Parul, reported in 1999(1) RSJ 203 : 1999(1) SCT 124 (SC). It has been held by the Supreme Court in that case that when the High Court found the charges proved, it was not justified in interfering with the punishment imposed by the Disciplinary Authority, particularly when in that case, the respondent was once removed from service on the charge of corruption and reinstated. He has also cited the case of Sub-Divisional Inspector of Post, Vaikam, and others Vs. Theyyam Joseph, etc., . In that case, it was observed by their Lordships of the Supreme Court as under :-

"It would thus be seen that the method of recruitment, the conditions of service, the scale of pay and the conduct Rules regulating the service conditions of ED Agents are governed by the statutory regulation. It is now settled law of this Court that these employees are civil servants regulated by these conduct rules.

Therefore, by necessary implication, they do not belong to the category of workmen attracting the provisions of the Act. The approach adopted by the Tribunal, therefore, is clearly illegal."

Learned counsel for the petitioner relied on the observations of the Supreme Court in the said case. Regarding the case of U.P. State Road Transport Corporation (supra), it was held that there was no reference to the Labour Court made in that case. After the order of removal from service, the employee had directly moved the High Court and challenged the same.

3. The case of Theyyam Joseph (supra), was decided by the Supreme Court. However, the provisions of Section 11A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) are not discussed. In that case, it was held that the Extra Departmental Agent (EDA) was not a workman and that EDAs are civil servants and do not belong to the category of workmen. Counsel for the petitioner has stated that this judgment stands over-ruled by the judgment rendered in General Manager, Telecom Vs. A. Srinivasa Rao and Others, . In both the cases cited by the learned counsel for the petitioner, the provisions of Section 11A are not discussed. In the case of Theyyam Joseph (supra), the point in question whether the Court could substitute the punishment was not under consideration.

Section 11A of the Act reads as under:

"11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen :-

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require :

Provided that in any proceeding under this Section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter, "

As this provision of the Industrial Dispute Act was not under consideration in the aforesaid cases cited by the learned counsel for the petitioner, they cannot be said to be applicable in the present case.

4. The present writ petition, as mentioned above, has been filed challenging the award of the Labour Court. The question to be decided in this case is whether the Labour Court, Hisar, was right in substituting the punishment or not. When the Labour Court has jurisdiction to entertain the award, there appears to be no

reason why it should be held that it had no power to follow the statutory provisions of Section 11A of the Act. We find that the Labour Court had jurisdiction to substitute the punishment.

5. So far as the quantum of punishment is concerned, we find that because there was no allegation of embezzlement or misappropriation, the Labour Court has not erred in substituting the punishment, as mentioned above.

6. The next point argued by the teamed counsel for the petitioner is regarding the back wages. The Labour Court has awarded full back wages to the respondent in this case. Counsel for the petitioner argued that respondent No. 1 must be suffering and must have been gainfully employed. However, only because the workman survived after the punishment of removal, it cannot be presumed that he was gainfully employed. In the case of Hari Palace, Ambala City v. Presiding Officer, Labour Court, 1979 P.L.R. 720, it has been held by the Full Bench of this Court that the workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during enforced idleness. That is the normal rule and party objecting to it must establish the circumstances necessitating departure.

7. In view of the above discussion, we do not find any reason to interfere with the part of back wages also. It has not been shown to us how respondent No. 1 can be presumed to be gainfully employed. There is no iota of evidence to show that he was gainfully employed. We do not find it proper to interfere with this part of the award also.

Consequently, the writ petition filed by the petitioner is dismissed in limine.

8. Petition dismissed.